

Message Text

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ACTION STR-07

INFO OCT-01 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00
AID-05 SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02
OMB-01 DOE-15 AF-10 ARA-10 EA-10 EUR-12 NEA-11
/167 W

-----105839 301039Z /12

P 301005Z JUN 78
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 1503

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USMTN

STR FOR ACTION

STR PASS CODEL

E.O. 11652: N/A
TAGS: MTN, ETRD
SUBJECT: MTN: NEXT STANDARDS INFORMAL GROUP MEETING--
- DEVELOPMENTS ON OUTSTANDING ISSUES

1. AT THE SUGGESTION OF STANDARDS SUBGROUP CHAIRMAN
(P. WILLIAMS), WE HAVE AGREED TO MORE OR LESS CONTINUOUS
STANDARDS MEETINGS BEGINNING THE WEEK OF JULY 3. IN
ORDER TO FACILITATE PROGRESS TOWARDS JULY 15 DEADLINE
WE WILL REQUIRE NEW INSTRUCTIONS ON THE FOLLOWING
MAIN ISSUES: WITHOUT SUCH INSTRUCTIONS IT WILL NOT
BE POSSIBLE TO REACH AGREEMENT ON THE CODE BY JULY 15.

2. LEVELS OF OBLIGATION: EC DEL HAS TOLD US THAT
SINCE STANDARDS ISSUE WAS DISMISSED AS "TECHNICAL PROB-
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LEM" IN THE JUNE 19 AND 20 US/EC TALKS, MEMBER STATE
ATTITUDES ON THIS ISSUE HAVE "HARDENED".
FURTHER, SOME MEMBER STATES (UNSPECIFIED) BELIEVE
THAT WITHOUT SETTLEMENT ON THIS ISSUE, THE STANDARDS
CODE WILL NOT BE A BINDING AGREEMENT BUT MERELY A
STATEMENT OF PRINCIPLES. IN THIS REGARD, WILLIAMS
SUGGESTED SOME OBVIOUS LINKAGES WITH OTHER U.S.

COMPROMISES ON OUTSTANDING CODE ISSUES WHERE U.S. COULD ADVANCE ITS INTERESTS IN EXCHANGE FOR LEVELS OF OBLIGATION PROPOSALS, E.G. DISPUTE SETTLEMENT, CERTIFICATION SYSTEMS AND GATT LINKAGE. IN ADDITION, WILLIAMS OFFERED HIS PERSONAL SUGGESTION THAT AN INTERPRETIVE NOTE TO THE DISPUTE SETTLEMENT PROVISIONS MIGHT BE ADDED TO CLARIFY THE DOCTRINE OF "REASONABLE EXPECTATIONS" IN A "BEST ENDEAVORS" CONTEXT LIKE THAT FOUND IN GATT ARTICLE XXIV:12. IN ROUGH TERMS, THE LANGUAGE COULD BE AS FOLLOWS: "IF ADHERENTS TAKE THE OBLIGATION OF ALL REASONABLE MEANS, THEN OTHER GOVERNMENTS HAVE A REASONABLE EXPECTATION THAT THEIR EFFORTS WILL BE SUCCESSFUL." WILLIAMS BELIEVES THAT THIS TEXT REFLECTS WHAT THE CANADIANS HAVE BEEN THINKING AND WILL INFORMALLY EXPLORE ITS ACCEPTABILITY WITH THE EC.

3. RELATIONSHIPS OF CODE TO GATT: THE SWISS HAVE CIRCULATED INFORMALLY THE FOLLOWING PROPOSAL ON SECTION 22(F):

QUOTE:

ADHERENTS WILL NOT INVOKE THE GENERAL AGREEMENT WITH RESPECT TO THE RIGHTS AND OBLIGATIONS IN THIS CODE. HOWEVER ARTICLE XXIII OF THE GENERAL AGREEMENT MAY BE INVOKED PROVIDED THAT THE DISPUTE LIMITED OFFICIAL USE

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SETTLEMENT PROCEDURE UNDER THE CODE HAS BEEN EXHAUSTED AND THAT THE COMMITTEE BEGIN BRACKETS DOES NOT DISAPPROVE END BRACKETS BEGIN BRACKETS APPROVES END BRACKETS SUCH INVOCATION.

UNQUOTE.

IN ADDITION, THE SWISS HAVE ALSO CIRCULATED THE FOLLOWING PROPOSAL FOR THE DISPUTE SETTLEMENT PROVISIONS:

QUOTE:

IF THE COMMITTEE CONSIDERS THAT THE CIRCUMSTANCES ARE SERIOUS ENOUGH TO JUSTIFY SUCH ACTION, IT MAY AUTHORIZE AN ADHERENT OR ADHERENTS TO SUSPEND THE APPLICATION TO ANY OTHER ADHERENT OR ADHERENTS OF SUCH OBLIGATIONS UNDER THE CODE AS IT DETERMINES TO BE APPROPRIATE IN THE CIRCUMSTANCES.

IF IN EXCEPTIONAL CASES THE COMMITTEE CONSIDERS, THAT THE CIRCUMSTANCES ARE SERIOUS ENOUGH TO JUSTIFY THE SUSPENSION OF A CONCESSION OR OTHER

OBLIGATIONS UNDER THE GENERAL AGREEMENT, IT MAY
RECOMMEND TO THE CONTRACTING PARTIES TO AUTHORIZE A
CONTRACTING PARTY IN ACCORDANCE WITH THE PROVISIONS
OF ARTICLE XXIII, 2, TO SUSPEND A CONCESSION OR
OTHER OBLIGATIONS UNDER THE GENERAL AGREEMENT AS
THEY DETERMINE TO BE APPROPRIATE IN THE CIRCUMSTANCES.

UNQUOTE.

WHILE THE LANGUAGE COULD BE POLISHED, WE BELIEVE
THAT THESE CONCEPTS AFFORD A BASIS FOR RESOLVING
A LONG OUTSTANDING ISSUE. THE PROPOSAL FOR SECTION
22(F) CORRESPONDS TO THE NOTION RAISED AT THE NOV.
1977 INFORMAL MEETING AND HAS BEEN INCORPORATED IN
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INFO OCT-01 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10
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AID-05 SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02
OMB-01 DOE-15 AF-10 ARA-10 EA-10 EUR-12 NEA-11
/167 W

-----105945 301039Z /12

P 301005Z JUN 78
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 1504

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STR FOR ACTION
STR PASS CODEL

THE SECRETARIAT'S DISPUTE SETTLEMENT DRAFT (PARA 21(K)).
WHILE INDEPENDENT CODE MIGHT AVOID CERTAIN AMBIGUITIES

ABOUT LEGAL RIGHTS, A TRULY INDEPENDENT CODE COULD ONLY BE ACHIEVED BY ADHERENTS RENOUNCING THEIR GATT RIGHTS ON ANY STANDARDS OR CERTIFICATION ISSUE. AS A PRACTICAL MATTER, WE DO NOT BELIEVE THIS IS REALISTIC. ADHERENTS WILL MAINTAIN THEIR OPTION TO EXERCISE THEIR GATT RIGHTS. THE SWISS IDEAS OFFER A MIDDLE COURSE SO ADHERENTS ARE REQUIRED TO EXHAUST THE CODE PROCEDURES IN THE FIRST INSTANCE. AT THIS POINT WE DEVIATE FROM THE SWISS WHO SUGGEST THAT GATT ARTICLE XXIII PROCEDURES AS WELL AS SANCTIONS BE AVAILABLE TO CODE ADHERENTS. THE CENTRAL ISSUE IS WHETHER THE CODE COMMITTEE SHOULD MAKE DETERMINATIONS THAT INVOLVE PURELY GATT MATTERS, E.G. TECHNICAL REGULATIONS NULLIFIED OR IMPAIRED THE BENEFIT OF A TARIFF CONCESSION. SUCH DETERMINATIONS WOULD BE LIMITED OFFICIAL USE

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IMPLICIT IN THE COMMITTEE'S RECOMMENDATION TO THE CP'S THAT A GATT CONCESSION OR OBLIGATION BE SUSPENDED. THIS PRESENTS A DANGEROUS PRECEDENT WHEREBY OTHER CODES WOULD BE CONSTANTLY (AND PERHAPS DIFFERENTLY) INTERPRETING GATT PROVISIONS. TO AVOID THIS UNWIELDY AND POTENTIALLY TROUBLESOME SITUATION WE WOULD SUGGEST THAT IN ADDITION TO CODE PROCEDURES, THE POSSIBILITY FOREFFECTIVE SANCTIONS WITHIN THE CODE ALSO BE EXHAUSTED BEFORE RESORTING TO GATT. IF ADEQUATE CODE SANCTIONS ARE NOT FOUND, THE CASE COULD BE REFERRED TO GATT WITH THE COMMITTEE'S FINDINGS. THE COMMITTEE'S FINDINGS WOULD BE REGARDED AS DEFINITIVE WITH RESPECT TO INTERPRETING THE CODE'S PROVISIONS. THE GATT CP'S WOULD DECIDE WHETHER THE CASE WARRANTED XXIII IN LIGHT OF NULLIFICATION AND IMPAIRMENT OF GATT BENEFITS (E.G. TARIFF BINDINGS), AND IF SO, MAKE AN APPROPRIATE RECOMMENDATION TO THE DISPUTANTS.

4. NORDIC PROPOSALS ON CERTIFICATION SYSTEMS: THE REVISED NORDIC PROPOSALS REFLECT MANY OF OUR INITIAL COMMENTS. THE KEY OUTSTANDING ISSUE IS WHETHER ACCESS TO CERTIFICATION SYSTEMS AS EXPLAINED BY THE NORDICS IS SUFFICIENT, OR IF WE SHOULD CONTINUE TO PRESS FOR PARTICIPATION IN REGIONAL SYSTEMS.

5. DISPUTE SETTLEMENT: SEE REVISED SECRETARIAT DRAFT SEPTEL.

6. DRAFTED BY WALLAR. MCDONALD

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: STANDARDS, PLANNING MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 30 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978GENEVA09915
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780270-0548
Format: TEL
From: GENEVA USMTN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t1978064/aaaaadgg.tel
Line Count: 220
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: a7a94685-c288-dd11-92da-001cc4696bcc
Office: ACTION STR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2282860
Secure: OPEN
Status: NATIVE
Subject: MTN: NEXT STANDARDS INFORMAL GROUP MEETING-- - DEVELOPMENTS ON OUTSTANDING ISSUES
TAGS: ETRD, MTN
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/a7a94685-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014